IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.130 OF 2004

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Mrs.Agnes Rodrigues ...Petitioner

v/s.

M/s.The Oberoi Towers ...Respondent

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Mr.P.M. Mokashi for the Petitioner.

Mr.M.M.Varma i/b R.Gehani for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 31ST JULY, 2006

P.C.:

1. The facts that are material and relevant for deciding this petition are that the Petitioner was

working with the Respondent Hotel as a Room Attendant. A guest in one of the rooms in Hotel, who was a foreign national found that the Petitioner was standing near his open bag in his room. He also found that some money from his bag was stolen. Charge-seet was served on the Petitioner by the management. Evidence was led. Immediately, after the incident the Petitioner alongwith two other attendants were called to the room in the presence of security officer by name Mr.Mukadam. The guest identified the Petitioner. Mr.Mukadam has been examined as a witness in the inquiry. Relevant portion of his deposition reads as under:-

> "Then immediately I and Mr.Anil Virkut who is also a security officer went to the Lobby Manager’s desk whereby he said that guest is there in the room please go and see the guest. From there both of us immediately took the Elevator and went to room No.1130 whereby the guest was present there in the room. He stated that at around 1350 hrs., he went out of the room and came back around approx. 1415 hrs. and further he said that he saw one room made in his room when he entered the room, the

maid immediately replied to the guest by saying "goodafternoon" and went out of the room.

The guest said as she was standing next to his luggage where by he found his bag zip as well as his wallet was opened. Guest immediately further stated that yesterday that was 22-7-1995 he found his 50000 Japanese Yen missing from his wallet. As guest has seen the maid going out of his room all the three Room Attendants who were on duty on that day on the same floor were taken to the guest’s room when the guest identified Ms.Agnes Rodrigues is the maid who entered in his room. Then we immediately asked the three Room Attendants to come down to security for further investigation.

It is clear from his deposition that Mr.Mukadam deposes that he alongwith other security officer Mr.Anil Virkut were called to the desk of the Lobby Manager and the Lobby Manager asked them to go and see the guest. Accordingly Mr.Mukadam and Mr.Virkut went to the relevant room. There all the three

attendants including the Petitioner were summoned and the guest identified the Petitioner as the person who was seen by him standing in his room near his bag.

2. The learned Counsel appearing for the Petitioner is not able to point out that Mr.Mukadam was cross-examined on this aspect of the matter. Thus the statement of Mr.Mukadam that the guest in his presence identified the Petitioner as the person who was found in the room by the guest goes unchallenged. The Inquiry Officer found the Petitioner to be guilty of the charge and her services were terminated. Reference was made under the Industrial Disputes Act. Firstly, the Labour Court made an inquiry to find out whether enquiry is fair and proper. The Labour Court found that the inquiry was fair and proper. Then the Labour Court found that the findings recorded by the Inquiry Officer are proper. He found that considering the nature of the charge it cannot be said that the punishment is disproportionate.

3. I have heard the learned Counsel for the Petitioner. I have gone through the original statement of the witnesses. In my opinion, the most crucial witness was Mr.Mukadam and the most crucial

aspect of his deposition was that in his presence the Petitioner was identified by the guest/foreign national as the person who he found in his room near his open bag. Mr.Mukadam in his statement clearly stated that in his presence the guest identified the Petitioner as that person. The Petitioner has chosen not to cross-examine Mr.Mukadam on that aspect. That the Petitioner examined herself as a witness and stated that the guest could not identify any of the three persons and the management did not cross-examine her on that aspect, in my opinion, does not make any difference because it is within the jurisdiction of the inquiry officer to appreciate the evidence on record. In my opinion, considering that Mr.Mukadam was an independent person and the enquiry officer in the absence of cross-examination of Mr.Mukadam on the most crucial aspect, accepted his testimony, no fault can be found with the tribunal holding that the inquiry was proper and that the finding of the enquiry officer was also proper. Considering the nature of the work that the Petitioner had to perform, trust and integrity is of foremost importance and therefore, it is obvious that such a person cannot be ordered to be reinstated in service.

4. Taking overall view of the matter, therefore, in my opinion, the finding recorded by the reference court is a finding which cannot be said either to be perverse or that it is impossible to be reached on the basis of material on record. Therefore, it will not be proper for this court to disturb this finding in the extra ordinary jurisdiction of this court. Petition, therefore, fails and is dismissed. Rule discharged with no order as to costs.

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